

EXHIBIT #6

(Redacted Exhibit)

Singer Declaration

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE EASTERN DISTRICT OF VIRGINIA
4 ALEXANDRIA DIVISION

5 CAPITAL ONE FINANCIAL CORPORATION,
6

7 Plaintiff, -

8 vs. -

9 JOHN A. KANAS and JOHN BOHLSSEN,
10

11 Defendants.
12 - - -

13 *** HIGHLY CONFIDENTIAL ***

14 Friday, February 17, 2012
15 - - -

16 Rule 30(b)(6) Videotaped Deposition
17 of Konrad Schwarz, taken pursuant to Notice,
18 was held at the law offices of Gibson Dunn &
19 Crutcher, LLP, 200 Park Avenue, New York,
20 New York 10166, commencing at 10:42 a.m., on
21 the above date, before Toni Allegrucci, a
22 Notary Public of the State of New York.
23 - - -

24 MAGNA LEGAL SERVICES

25 Seven Penn Center
1635 Market Street 8th Floor
Philadelphia, Pennsylvania 19103
(866) 624-6221

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1 HIGHLY CONFIDENTIAL - K. Schwarz
 2 Q. But you have an idea that looking
 3 for office space is engaging in banking, you
 4 have a view that leasing office space is
 5 engaging in banking, you have a view that
 6 building out office space, including
 7 painting, is engaging in banking, okay. We
 8 have covered all of that.
 9 A. Paining a branch.
 10 Q. Painting a branch?
 11 A. Right.
 12 Q. Not painting your house, painting a
 13 branch.
 14 A. Right.
 15 Q. So I want to explore where you draw
 16 the line on what is permissible and what is
 17 not in terms of what you believe banking is
 18 and what's not banking.
 19 A. Okay.
 20 Q. So if Mr. Kanas were to sit in his
 21 home in New York and think about what
 22 business plans he would have upon the
 23 expiration of his non-compete, would you say
 24 that's engaging in banking?
 25 MR. SCHWARTZ: Objection, calls for

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1 HIGHLY CONFIDENTIAL - K. Schwarz
 2 a legal conclusion.
 3 A. My point of view, again not a legal
 4 point of view but in terms of how we
 5 prosecute the business, is that any activity
 6 that he engages in that is similar to ours,
 7 that has eyes towards the tri-state area, in
 8 fact, is competing in the banking business.
 9 For example, I'm a strategist, I
 10 develop strategies all the time. I sit
 11 around and I think about the future things
 12 that we're going to do. So, if John is
 13 sitting and thinking in a detailed way as to
 14 his plan to acquire branches in certain areas
 15 and developing those strategies actively,
 16 again, I'm not an attorney but, to me, that's
 17 a technical violation of the non-compete.
 18 Q. You said in that answer that he's
 19 developing those strategies actively and I'm
 20 not sure what that means, so let me go back
 21 to my question.
 22 A. I'm just referring back to your
 23 hypothetical, which is, he's sitting in his
 24 office, he's actually thinking about which
 25 branch locations he wants to be in, he's

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1 HIGHLY CONFIDENTIAL - K. Schwarz
 2 developing plans for his entry into the
 3 market; that plan development is banking and
 4 you can't have the result without the plan.
 5 Q. Even if he's doing it in his study
 6 of his home by himself with it all in his
 7 head.
 8 MR. SCHWARTZ: Objection,
 9 incomplete hypothetical, calls for a
 10 legal conclusion.
 11 A. I'm at not an attorney as to
 12 whether or not to say that that --
 13 Q. I'm not asking you to be an
 14 attorney.
 15 A. -- whether or not that is something
 16 we would do.
 17 Q. No.
 18 A. That's something we do, and...
 19 Q. See, I'm trying to get your
 20 understanding as a lay person.
 21 A. Right.
 22 Q. You are, in fact, an attorney, by
 23 the way. Okay. You went to law school, you
 24 went to a good law school, so you are an
 25 attorney, so I understand you are not a,

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1 HIGHLY CONFIDENTIAL - K. Schwarz
 2 quote, practicing attorney.
 3 A. Right.
 4 Q. That aside, I'm not asking you to
 5 render legal advice. You are a very senior
 6 officer of Capital One and you have views as
 7 to what constitutes banking and what doesn't,
 8 and I'm just exploring what falls on either
 9 side of that line for you. So the question
 10 which I think you've largely answered, but I
 11 just want to clarify it, is that Mr. Kanas
 12 has a home in New York, he has a study in
 13 that home, he sits there one night by himself
 14 on his, in his reading chair, closes his eyes
 15 and starts thinking strategy about once his
 16 non-compete expires what parts of Manhattan
 17 he would like to open branches in, what types
 18 of business lines he would get into, the type
 19 of strategy that you engage in, for example,
 20 so my question is, if he does that is it your
 21 view that he's engaging in banking activity?
 22 MR. SCHWARTZ: Objection, calls for
 23 a legal conclusion.
 24 A. Again, I'm not an attorney. But
 25 what I'll tell you is that that in a lot of

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1 HIGHLY CONFIDENTIAL - K. Schwarz
2 ways was the formation of North Fork Bank I
3 and in a lot of ways will be the creation of
4 North Fork Bank II. John --

5 Q. So the answer -- I'm sorry.

6 A. John was the driving force and,
7 frankly, decision-maker for almost every
8 major decision at North Fork Bank I, he was
9 the driver of the strategy, he will be the
10 driver of the strategy in North Fork Bank II.

11 Q. So your view is in the nonlawyer
12 capacity that, if he does what I described,
13 he's engaging in banking activity in
14 New York State, correct?

15 A. Could you describe again?

16 Q. Yes. We've gone over two or three
17 times now.

18 A. Yeah.

19 Q. He sits in his house, sitting there
20 thinking about the strategic steps he's going
21 to take to open branches in New York State
22 after his non-compete expires.

23 A. I think technically that's
24 competition, yes.

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9 (Exhibit 78, document, marked for
10 identification, as of this date.)

11 A. Thank you.

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1 HIGHLY CONFIDENTIAL - K. Schwarz
 2 A. Ultimately, yes.
 3 Q. And customers can only come in and
 4 conduct banking business once a location is
 5 up and running, correct?
 6 MR. SCHWARTZ: Objection to form.
 7 A. Unless you open the doors when you
 8 are under construction, customers can only
 9 come in, again, the doors don't open unless
 10 you have a lease signed and the construction
 11 done, so they are all sort of interrelated.
 12 Q. Now, have you read the non-competes
 13 or non-compete covenants executed by
 14 Mr. Kanas and Mr. Bohlsen?
 15 A. Not in their entirety.
 16 Q. What portions have you read?
 17 A. I've seen portions in the
 18 complaint.
 19 Q. So just the portions quoted in the
 20 complaint?
 21 A. And I've seen, I've seen a copy of
 22 the non-compete. I haven't read it end to
 23 end, but I scanned through it.
 24 Q. What's your, your best recollection
 25 as to -- well, strike that.

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1 HIGHLY CONFIDENTIAL - K. Schwarz
 2 What's your best understanding as
 3 to what they prohibit Mr. Kanas and
 4 Mr. Bohlsen from doing?
 5 A. From competing in the business of
 6 acquiring and managing consumer and
 7 commercial banking products in New York,
 8 New Jersey and Connecticut.
 9 Q. Can you tell me what you understand
 10 consumer banking products to be?
 11 A. I think the business of consumer
 12 banking products involves --
 13 Q. I'm sorry, but that's not my
 14 question. What are consumer banking
 15 products?
 16 A. But are you trying to get to
 17 ultimately my opinion as to what they are
 18 restricted from doing or --
 19 Q. No.
 20 A. -- or do you want a sort of lecture
 21 on consumer banking products?
 22 Q. No, neither one. I've already
 23 asked you what you understand them --
 24 A. Right.
 25 Q. -- to be precluded from doing. Now

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1 HIGHLY CONFIDENTIAL - K. Schwarz
 2 it's a separate question, what are consumer
 3 banking products? And it can be just an
 4 itemized list as you understand that term.
 5 A. I would say there are three broad
 6 categories there.
 7 Q. Okay.
 8 A. That I already gave you. Lending,
 9 deposits and brokerage are the big ones.
 10 Q. What kind of lending or what kind
 11 of loans?
 12 A. Mortgages, home equity, auto loans,
 13 personal loans. You are asking about
 14 consumer, right?
 15 Q. Right, right. How about credit
 16 cards?
 17 A. Credit cards would apply, as well.
 18 Q. Now, how about, what is your
 19 understanding of what commercial banking
 20 products are?
 21 A. Real estate loans, middle-market
 22 loans, small business loans, to name broad
 23 categories.
 24 Q. Okay. Let's go back to the time
 25 line.

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1 HIGHLY CONFIDENTIAL - K. Schwarz
 2 A. Which timeline?
 3 Q. This, I had you on your employ --
 4 A. My personal timeline?
 5 Q. Yeah, your employment. Now we're
 6 post North Fork and you've joined in 2007
 7 until October 2009?
 8 A. Right.
 9 Q. You were involved with the deposit
 10 and debit group, correct?
 11 A. Correct.
 12 Q. Can you tell me again, and I know
 13 you've said this in other context, but what
 14 specifically did you once you joined that
 15 group?
 16 A. You are talking about the
 17 activities or do you want me to give you the
 18 description of my, my responsibilities?
 19 Q. Shouldn't they be the same, what
 20 you were supposed to do and what you did?
 21 A. One is more detailed.
 22 Q. Just tell me what it is that job
 23 entailed.
 24 A. It effectively involved acquiring
 25 and managing deposit and debit customers.

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1 HIGHLY CONFIDENTIAL - K. Schwarz
 2 Q. And how do you do that? Let me
 3 rephrase the question. In the context of
 4 your job...
 5 A. Right.
 6 Q. ...how are debit and credit deposit
 7 customers, debit and --
 8 A. Deposit customers, right.
 9 Q. I'm sorry, so let me strike that.
 10 In the scope of your employment...
 11 A. Right.
 12 Q. ...at that time, how are debit...
 13 A. Yeah.
 14 Q. ...and deposit customers acquired?
 15 A. So I think it's important to
 16 understand sort of the notion of, of managing
 17 the P&L in this space, right, which means you
 18 are effectively accountable for the bottom
 19 line and the financial results. So if you
 20 think about working up from that what are all
 21 the different components that go into it,
 22 right...
 23 Q. Okay.
 24 A. ...there's revenue and expense.
 25 Q. Right.

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1 HIGHLY CONFIDENTIAL - K. Schwarz
 2 A. So think of, you know, the expenses
 3 that we put into acquiring a customer. So
 4 everything that we've talked about, about,
 5 hey, I've got to work with my branch partners
 6 who don't own the P&L, did not own the P&L at
 7 the time to say, what is the branch strategy,
 8 what are we going to do, where are we going
 9 to acquire, where are we going to build.
 10 Again, that was their responsibility, but
 11 they were, they were a performer to the
 12 broader sort of P&L segment.
 13 What marketing campaigns are we
 14 going to run, so everything from, as you
 15 said, birth to death within the banking
 16 business that related to the deposit P&L was
 17 what we were accountable for sort of
 18 managing.
 19 Q. I mean, but I guess what I'm
 20 asking --
 21 A. Yeah, yeah.
 22 Q. -- and maybe a little more detail
 23 than I was asking for, Mr. Schwarz, than I
 24 intended to ask.
 25 A. Right.

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15 Q. Let me ask you this. When you say
 16 you want to --
 17 A. This is a very interesting topic.
 18 I like this.
 19 Q. When you say you want to acquire...
 20 A. Yeah.
 21 Q. ...a debit or credit business,
 22 putting aside now profitability or, you know,
 23 other factors, you just want to acquire
 24 deposit and debit business, does that
 25 translate to meaning acquire customers who

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1 HIGHLY CONFIDENTIAL - K. Schwarz
 2 bring that business to the, to the branch?
 3 A. I'm not sure what you mean by
 4 putting aside profitability. It's not really
 5 something that we can relate to.
 6 Q. Because I'm not saying
 7 profitability --
 8 A. Because that would lead to sort of
 9 very irrational and sort of just non,
 10 non-business decisions.
 11 Q. Let me, let me go at it this way.
 12 A. Do you see what I mean?
 13 Q. Yeah. I understand that.
 14 A. Okay.
 15 Q. And we're going to where really I
 16 think way more detail than we need to. Let
 17 me give you an example.
 18 Okay. I asked you tell me what it
 19 is your job entailed, okay, and you said it
 20 effectively involved acquiring and managing
 21 deposit and debit customers?
 22 A. Right.
 23 Q. Okay. How did Capital One or how
 24 does Capital One, if it changed during the
 25 period tell me...

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C E R T I F I C A T E
STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

I, Toni Allegrucci, a Notary Public
within and for the State of New York, do
hereby certify:

That KONRAD SCHWARZ, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that
such deposition is a true record of the
testimony given by the witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I
am in no way interested in the outcome
of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 24th day of February,
2011.

TONI ALLEG RUCCI